IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1031 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANISHANKER BOGHABHAI & 25 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for the Petitioners
MR AD OZA, GOVERNMENT PLEADER with MR HM PRACHCHHAK, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1
MR DIPAK R.DAVE for Respondent No.2
RULE SERVED for Respondent(s) : 3
MR HJ NANAVATI for Respondent(s) : 4

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/01/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the respective petitioners of village Pankhan as well as the Pankhan Gram Panchayat have prayed for appropriate writ, direction and/or

order quashing and setting aside the decision of the Gujarat Secondary Education Board (for short “the Board”) contained in its resolution No.395/98 passed in its meeting of the executive committee held on 19-12-1998 permitting shifting of the school by respondent No.4 from village Pankhan to Keshod. The petitioners have also prayed for an appropriate writ, direction and/or order quashing and setting aside the order/communication dated 24-12-98 (Annexure-F to the petition) of the District Education Officer, Junagadh granting permission to respondent No.4 to shift the building of school from village Pankhan to Keshod.

2. It is the contention on behalf of the petitioners that respondent No.4 trust was granted the permission to start granted school at village Pankhan, Taluka Keshod considering the need of secondary school at village Pankhan as within 10 kms. of area, there was no secondary school. It is the case of the petitioners that initially, respondent No.4 submitted an application before the Board granting them permission to shift the secondary school from village Pankhan to Keshod and by communication dated 21-10-97, the Board – respondent No.4 communicated the decision of the Executive Committee of the Board refusing/rejecting the application of respondent No.4 for shifting the

building of the school from village Pankhan to Keshod as there was a distance of 10 kms. between old building and new building and that beneficiaries would be changed and that it will be from rural area to urban area. It is the case of the petitioners that in spite of that and under the political influence, thereafter, though the Board has no power, reviewed its earlier order and by impugned resolution/decision, granted the permission in favour of respondent No.4 permitting shifting of the school by respondent No.4 from village Pankhan to Keshod and therefore, the petitioners have preferred the present application for the aforesaid relief/s.

3. An affidavit in reply is filed on behalf of the respondent Board and it is pointed out that it is on the basis of the decision taken by the State Government directing the Board to grant permission to shift school from village Pankhan to Keshod, the aforesaid impugned resolution came to be passed granting the permission in favour of respondent No.4. Learned AGP appearing on behalf of the State Government has submitted that after the earlier decision of the Board dated 21-10-97, respondent No.4 approached the State Government and as a **'SPECIAL CASE'**, the State Government took decision exercising powers under Section 48 of the Gujarat

Secondary Education Act, 1972 (for short, 'the Act') and the said decision was taken on the basis of the recommendation by one Member of Legislative Assembly (MLA).

4. As nothing was mentioned in the affidavit in reply what were those **'SPECIAL REASONS'** to exercise the power under Section 48 of the Act and how the case of respondent No.4 was treated as a '**SPECIAL CASE'** and as this Court was not satisfied with the affidavit in reply, directed the learned AGP to produce the original file and on going through the original file of the State Government on the basis of which the impugned decision is taken by the State Government considering the case of respondent No.4 as a **'SPECIAL CASE'**, this Court has found that though the concerned Secretary of the Education Department opined against granting of the permission, still on the basis of the recommendation of the concerned Minister of the Education Department mentioning to grant the permission as a **'SPECIAL CASE'**, the decision has been taken. Therefore, this Court directed the respondents to justify their action in considering the case of respondent No.4 as a **'SPECIAL CASE'**. Today, when the matter is called out and finally heard, Shri A.D. Oza, learned Government Pleader instructed by Shri H.M.Prachchhak, learned AGP

appearing on behalf of the State Government as well as Shri Dipak R.Dave, learned advocate appearing on behalf of Gujarat Secondary Education Board have jointly submitted that both the Respondents i.e. Gujarat Secondary Education Board as well as the State Government are withdrawing the impugned order passed in favour of respondent No.4 by which the permission has been granted to transfer the high school/secondary school from village Pankhan to Keshod with immediate effect and in view of the above, the order in favour of respondent No.4 is to be treated as cancelled.

In view of the withdrawal of the order granting the permission in favour of respondent No.4 to shift the secondary school from village Pankhan to Keshod, the necessary consequences will be that the school run by respondent No.4 is now to be treated as to run the same at village Pankhan. However, in view of the fact that there are existing students studying at Keshod, it is directed that till the current academic year the position which is prevailing as on today be continued and thereafter, respondent No.4, if they want to run school, are required to run school at village Pankhan subject to any fresh decision taken by the Board. So far as the application submitted by respondent No.4 is concerned, in view of the withdrawal of the impugned

order by both the parties, respondent No.2 is now required to consider the application submitted by respondent No.4 which was submitted earlier for shifting the secondary school from village Pankhan to Keshod, considering the position which was prevailing at the time when the application was submitted and considering the objections of the petitioners, is now required to take appropriate decision in accordance with law and on merits. However, in view of the withdrawal of the impugned order by which the permission was granted to shift the school premises and the secondary school from village Pankhan to Keshod, no further orders are required to be passed and the concerned respondents, i.e. the State Government as well as the Gujarat Secondary Education Board are directed to pass consequential order on the basis of the withdrawal of the earlier impugned order and as such on withdrawal of the impugned orders, they are to be treated as cancelled with immediate effect subject to the observations which are made hereinabove meaning thereby to continue the position which is prevailing at present till the present academic year. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH, J.)

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